

In the High Court of Punjab and Haryana, Chandigarh.

CWP No. 15970 of 2006

Date of Decision: 10.10.2006

Lily Usha

....Petitioner

Versus

State of Punjab and others.

....Respondents.

Coram:- Hon'ble Mr.Justice J.S. Khehar.
Hon'ble Mr. Justice S.D. Anand.

Present: Mr. B.S. Jaswal, Advocate
for the petitioner.

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J.S. Khehar, J. (Oral).

The petitioner has approached this Court to impugn the order of her transfer dated 14.9.2006. The primary grievance of the petitioner is, that the impugned transfer order has the effect of annulling her posting at the present station, ordered merely two and a half months preceding the passing of the impugned order. It is the vehement contention of the learned counsel for the petitioner, that the impugned transfer order is against the policy instructions issued by the State government. It is also asserted, that the instant transfer order has been effected at the behest of the local MLA, and as such, it is liable to be concluded, that the same is based on extraneous considerations/malafides.

The issue in hand needs to be adjudicated upon in terms of the law declared by the Apex Court. In this behalf, reference may be made to the decision rendered by the Apex Court in State of U.P. and others V.

Gobardhan Lal, AIR 2004 SC 2165, wherein the Supreme Court observed as under:-

“8. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. this Court has often reiterated that the order of transfer made in transgression of administrative guidelines

cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

Since it is the case of the petitioner, that the impugned transfer order is based on pointed favour shown at the hands of the MLA, the matter primarily should be examined in that respect. The pleadings of the instant writ petition, however, reveal that the concerned MLA has not been impleaded as a party respondent, as such, it is not possible for us to take into consideration any of the allegations levelled by the petitioner against a person who has not been impleaded as a party respondent. Accordingly, the plea raised by the petitioner, that the impugned transfer order is based on extraneous considerations/malafides, will have to be rejected.

The only issue, therefore, remains whether the instant transfer order can be set aside merely on account of the fact, that it is in violation of the transfer policy promulgated by the State government. In this behalf, it has been repeatedly reiterated by the Supreme Court, that the policy instructions issued in respect of transfer, are merely directory in nature. Keeping in view, the parameters laid down by the Supreme Court in Gobardhan Lal's case (supra), we are of the view, that it is not possible for us to interfere in the impugned transfer order.

Dismissed.

(J.S. Khehar)
Judge.

(S.D. Anand)
Judge.

10.10.2006
sk.

